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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No 54

UNITED STATES OF AMERICA,

Petitioner,

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, INDIVIDUALLY, AND AS CO-PARTNERS, TRADING AS SEELEY DAIRY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENTS.

WILLIAM PARKER WARD,
Attorney for Respondents.

November, 1946.

PAUL O'BRIEN PRINTING COMPANY, SOUTH JACKSON, CHICAGO

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OPINION BELOW.

The District Court did not render an opinion but did enter findings of fact, conclusions of law, order for judgment and final judgment as set forth in the record (R. 117-123). The opinion of the Circuit Court of Appeals appears in the record (R. 135-142) and is reported, 152 F. 2d 167.

JURISDICTION.

The order of the Circuit Court of Appeals reversing the judgment of the District Court was entered October 30, 1945. The order of the Circuit Court of Appeals denying the petition for rehearing was entered January 5, 1946. The petition for certiorari was filed on March 7, 1946 and certiorari was granted April 22, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., sec. 347).

QUESTION PRESENTED.

Whether under the Agricultural Marketing Agreement Act the District Courts are divested of original jurisdiction to adjudicate a handler's defenses of law and of fact.

STATUTE AND ORDER INVOLVED.

This action was instituted under provisions of the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. sec. 601 *et seq.*). The pertinent provisions are as follows:

> 8a (6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said courts.
>
> 8a (7) Upon the request of the Secretary of Agriculture it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant

to, this chapter. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

8a (8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this chapter or now or thereafter existing at law or in equity.

8c (15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

8c (15) (B) The District Courts of the United States (including the district court of the United States for the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling

is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this sub-section (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a (6) of this title. Any proceedings brought pursuant to section 608a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

The administrative order involved is an executive order of the Secretary of Agriculture promulgated by virtue of the Agricultural Marketing Agreement Act. The order, commonly called Order 41, fixes the minimum prices to be paid by dairies to farmers for milk sold in the Chicago, Illinois marketing area. Prices are determined accordingly to quantity and quality of sales of milk products.

The form of Order 41 involved herein appears in full in the record (R. 43-65). The pertinent sections of the Order under which petitioners sought to collect monies from respondents in the District Court is as follows (R. 61-62):

8 (g) Adjustment of Errors in Payments. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator

to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

The pertinent provision of the Order offsetting errors made by the employees of the agency supervising the operation of the order and disputes over indebtedness is as follows (R. 60):

7 (b) (5) Subtract not less than 4 cents nor more than 5 cents to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants located within the 70-mile zone.[1]

[1] The appendix in petitioners' brief filed in the Circuit Court of Appeals (Appellee's Brief, p. 29) showed a reserve fund on October 31, 1944 of $76,896.16.

STATEMENT.

Since this matter is on appeal on the pleadings only a review of the kind and contents of the pleadings is proper. Other matters not contained in the record of the judicial process are not properly a statement of the case.

A complaint was filed in the District Court for the Northern District of Illinois (R. 3), and answer was filed (R. 70). Then supplemental complaint (R. 73) and answer thereto followed (R. 89). Both complaints may be treated as one and both answers as one. All pleadings were verified.

The record of pleadings shows that the pricing Order involved became effective September 1, 1939; that since at least that date the respondents operate a dairy in the City of Chicago. Without prior administrative proceedings either by the Secretary of Agriculture under Section 8(a) 7 of the Act or the respondents under Section 8(c) 15 of the Act the petitioner filed an action in the District Court on September 15, 1942 alleging an indebtedness to the equalization fund of the Order. Petitioner alleged "errors in payments • • • have been disclosed by an audit of the defendants' books and records," a billing for indebtedness and non-payment (R. 6). The answer denied indebtedness, disclosure of errors and violation and pleaded affirmatively that the audit was inaccurate (R. 70). No violation of the Order other than indebtedness was alleged.

A supplemental complaint (R. 73) and answer thereto (R. 89) were filed realleging and denying indebtedness for a further period. An affirmative allegation that the billing "was based upon an erroneous, improper, incomplete and inaccurate inspection or audit of the defendants' accounts,

books, records and activities of their transactions" was made. Another affirmative allegation, referring to the various administrative proceedings available, was made setting forth that no administrative determination was made by the Secretary of Agriculture prior to the institution of the action (R. 94).

Petitioner has referred to a petition by respondents to stay (R. 95) filed in the District Court. This petition was never ruled upon and was at the request of respondents and with the immediate consent of the petitioner before consideration of the various motions by the District Court withdrawn from the record (R. 108). Having been withdrawn the petition[2] is not properly a part of the record, either of the trial court or of a reviewing court. *McClellan* v. *Carland*, 217 U. S. 268; *Southern Ry. Co.* v. *Walters*, 284 U. S. 190.

The District Court granted plaintiff's motion for judgment on the pleadings entering findings of fact, conclusions of law and final judgment order (R. 117). No evidence has been submitted by petitioner, nor were respondents permitted to offer any evidence.

Appeal was taken to the Circuit Court of Appeals for the Seventh Circuit. On October 30, 1945 that Court reversed the District Court remanding the same for trial, holding that petitioner had to prove its allegations of indebtedness and that respondents could avail themselves of any legal or equitable defense under the general powers of the Court. Petitioner's petition for rehearing was denied January 5, 1946 (R. 144).

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[2] Petitioner has by footnote (Petitioner's Brief, p. 12) set forth matters which are not properly a part of the record nor matters for judicial notice. Reviewing court sits in review of record of court below. *McClellan* v. *Carland*, 217 U. S. 268; *Southern Ry. Co.* v. *Walters*, 284 U. S. 190.

SUMMARY OF ARGUMENT.

I.

By the enactment of the Agricultural Marketing Agreement Act of 1937 the Congress did not divest the Federal District Courts of original jurisdiction to determine controversies between the government and handlers. The administrative procedure provided in the Act is cumulative or in addition to the remedies provided by the Judicial Code.

II.

The enforcement jurisdiction invoked under the Agricultural Marketing Agreement Act was improper in view of the adequate remedy at law for the collection of an alleged debt.

III.

The material issues of fact raised by the pleadings precluded the summary disposition of the case by use of motion for judgment on the pleadings.

ARGUMENT.

I.

By the Enactment of the Agricultural Marketing Agreement Act of 1937 the Congress Did Not Divest the Federal District Courts of Original Jurisdiction to Determine Controversies Between the Government and Handlers. The Administrative Procedure Provided in the Act Is Cumulative or in Addition to the Remedies Provided by the Judicial Code.

The principal question before this Court is whether or not the remedies of the administrative process provided by Sections 8 c (15) (A) and 8 c (15) (B) are cumulative or in addition to the remedies provided by the judicial code, 28 U. S. C. 41 (1), or exclusive.

Of initial importance in deciding that question is the Act itself.

1. In chronological order, first appears a section giving to the Government general remedies of *enforcement* of the orders under the Act. This has no counterpart as to relief for handlers, producers, or others who may claim to be adversely affected by an order.

> 8a (6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said courts.

2. The next provision chronologically, as if in clarification of possible doubt of a theory of exclusiveness of the

prior section, states that the remedies provided are cumulative and are in addition to such jurisdiction as would exist under the judicial code.

> 8a (8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this chapter or now or thereafter existing at law or in equity.

It will be noted that the cumulative remedies section does not limit or direct the relief to be obtained to any one party or class. The Government, the producers, the handlers, and all others are thereby confirmed in their judicial remedies "provided for elsewhere in this chapter or now or thereafter existing at law or in equity." 7 U. S. C. 608a (8). Congress thereby expressly reaffirmed the rights of litigants to a judicial determination of their controversies even as to present and future additional jurisdiction of courts both at law and in equity.

3. The third section with certain pertinent sections italicized is as follows:

> 8c (15) (A). Any handler subject to an order *may* file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not *in accordance with law* and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, *if in accordance with law.*
>
> 8c (15) (B). The District Courts of the United States (including the District Court of the United States for the District of Columbia) in any district in which such handler is an inhabitant, or has his

principal place of business, are hereby vested with jurisdiction in equity to review such rulings, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling *is not in accordance with law*, it shall remand such proceedings to the Secretary with directions either (1) *to make such ruling as the court shall determine to be in accordance with law*, or (2) to take such further proceedings as, in its opinion, the law requires. *The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter*, instituted pursuant to this subsection (15).

Manifestly, the foregoing provisions must be construed either as (1) containing an exclusive remedy which every aggrieved handler *must* pursue in the first instance to obtain relief, or (2) as granting a cumulative remedy which and aggrieved handler may ignore if he desires relief in the judicial forum.

This Court in an interpretation of these provisions held that the District Courts are not divested of jurisdiction of controversies between handlers and the government. *U. S. v. Rock-Royal Co-op.*, 307 U. S. 533.

In the *Rock-Royal* case which, like the instant case, was an enforcement action by the Government against handlers, this court in its initial consideration, of the Act recognized the jurisdiction of the courts for a judicial determination of a controversy.

"The Government makes the point that none of the defendants, all handlers, can object to these terms of the order * * * Although three of the defendants cannot complain of the benefits conferred upon cooperatives, for they are cooperatives, the defendant Jetter Dairy Company has standing *to raise the issue of want of statutory authority to except cooperative handlers from payment of the uniform price.*" *U. S.* v. *Rock-Royal Co.*, 307 U. S. 533, 560. (Italics supplied.)

At the same time this Court recognized the rights of handlers to raise any issue in the judicial form, and to defend an enforcement action such as involved in the instant case. A *judicial determination* of the issue resulted in the enforcement action.

"The defendants * * * contend that the bills include in their computation milk plainly excluded by the terms of the Order * * *

"As the action of the handlers forms the ground for the initiation of regulation under the Act and for classification, reports, calculation and payment under the Order, *we conclude* that the milk received by handlers for use in the area is the proper basis of computation." *H. P. Hood & Sons* v. *U. S.*, 307 U. S. 588, 560. (Italics supplied.)

In *Stark* v. *Wickard*, 321 U. S. 288, this court upheld the right of producers to enjoin unauthorized action by the Secretary of Agriculture. The Court gave support to the argument that the absence of any restriction as to parties under the comulative remedies section did not operate to divest a party of his right to a judicial determination of a controversy under the Act. The Court has granted judicial relief to a producer complaining of the operations of an Order. The Court said:

"The Act bears on its face the intent to submit many questions arising under its administration to judicial review. Secs. 8a (6), 8c (15), (A) and (B). It specifically states that the remedies specifically provided in Sec. 8a are to be in addition to any remedies now ex-

isting at law or equity. Sec. 8a (8). This Court has heretofore construed the Act to grant handlers *judicial* relief in *addition* to the statutory review specifically provided by Sec. 8c (15). * * *

"With this recognition by Congress of the applicability of judicial review in this field, it is not to be lightly assumed that the silence of a statute bars from the courts an otherwise justiciable issue." *Stark* v. *Wickard*, 321 U. S. 288, 303, 309.

To hold now that in a particular kind of controversy, as here involved, the jurisdiction of the District Courts has been removed would be to contradict the express working of the Act. The cumulative remedies section of the Act makes no exceptions as to particular kinds or class of controversies or parties to controversies. As Congress has power to grant or withdraw jurisdiction of a particular controversy in the absence of an express limitation the courts will be presumed to have full jurisdiction given under the Judicial Code. *Lockerty* v. *Phillips*, 49 F. Supp. 513, affirmed 319 U. S. 182. Jurisdiction being purely statutory, it is from the very essence of our three branch government, to be jealously guarded against encroachments and limitations. *Goldstein* v. *Groesbeck*, 42 F. Supp. 419, rev. on other grounds 142 F. 2d 422, cert. den., 323 U. S. 737. Where Congress by special act has removed jurisdiction, such a limitation will be respected.

"The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination." *Seligmans* v. *U. S.*, 30 F. Supp. 895.

In the instant case the record reveals that no prior administrative action occurred. No determination of violation or indebtedness was made under the administrative process. The District Court was the initial forum.

The administrative remedy provided by Congress broadens the right of handlers and affords by the very wording of the section an election of remedies.

> "Any handler subject to an order *may* file a written petition with the Secretary of Agriculture * * *" 8c (15) (A). (Italics supplied.)

The contention that the handler is excluded from his day in court is without merit for such a construction is manifestly contrary to the express wording selected by Congress.

In *U. S.* v. *Ranes*, 48 F. 2d 582 (C. C. A. 9) the Court stated:

> "Sec. 66 11 8c *supra* provides that 'the applicant may apply to the district court * * * for a review of such order or decision of the commission.' 'May' in its ordinary sense, means that which is permissive not mandatory."

The wording has recently been the subject of litigation in this Court under practically the same point of exhaustion of administrative remedies.

In *Moore* v. *Ill. Central R. Co.*, 312 U. S. 630, this Court in considering the failure to exhaust administrative remedies under the Railway Labor Act, 45 U. S. C. 151 *et seq.* said:

> "* * * But we find nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court * * * It is to be noted that the section pointed out, Sec. 153(i), as amended in 1934, provides no more than that disputes 'may be referred * * * to the * * * Adjustment Board * * *' It is significant that the comparable section of the 1926 Railway Labor Act (44 Stat. 577, 578) had, before the 1934 amendment, provided that upon failure of the parties to reach an adjustment a 'dispute shall be referred to

> the designated Adjustment Board by the parties, or by either party * * *' This difference in language substituting 'may' for 'shall,' was not, we think, an indication of a change of policy, but was instead a clarification of the law's original purpose. For neither the original 1926 Act, nor the Act as amended in 1934 indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature. The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge."

In the *Moore* case the party seeking the aid of the Federal Court under the election of remedies theory was the moving party, seeking initial relief. In the instant case the government as moving party made its election of the judicial forum and now seeks to further elect or choose for the handlers their forum for relief over the same controversy.

The argument that if "shall" had been used, a handler would perforce have to adjudicate all matters in the administrative forum even though no controversy existed falls, for if Congress had chosen "shall" the addition of "if the handler feels aggrieved" would have corrected the possible confusion.

> "* * * The idea which is now sought to be read into the grant by Congress * * * is not so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it. After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of

the thing as an ordinary man has a right to rely on ordinary words addressed to him." *Addison* v. *Holly Hill*, 322 U. S. 607, 617, 618.

Other sections of the Act nullify the ruling suggested by the Government. The provision that the decree in the enforcement action "shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)," 6 c 15 (B), invites other inconsistencies and wrongs under the government's suggestion.

Abatement generally means a temporary cessation subpect to revival. Story Eq. Pl. Sec. 354, 3 Bla. Comm. 301. The cessation being complete, not partial, would hardly be urged to apply for a mandatory injunction for monies allegedly due. The decree would never be final if the Secretary had for example determined administratively that no funds were due from the handler although the original decree in the enforcement proceeding mandatorily enjoined non-payment of a substantial sum for no judicial review under 15 (B) would follow the Secretary's determination.

Further, nowhere in the Act is any restriction placed upon the government to prevent an enforcement of the mandatory injunction such as granted in various District Court cases and in one Circuit Court of Appeals case, *U. S.* v. *Adler's Creamery*, 110 F. 2d 482, for the payment of monies allegedly due but denied by the handler. Assuming a market administrator contended a sizable sum of money was due from a handler he could proceed to full collection, under the government's theory, before a determination could be made through the administrative hearing on appeal. And the Act not only permits but expressly authorizes prompt collection of the decrees.

"* * * The pendency of proceedings instituted pur-

suant to this subsection (15) shall not *impede, hinder, or delay* the United States or the Secretary of Agriculture * * *" 8 (c) (15) (B). (Italics supplied.)

To justify such a theory would disregard principles of equity such as abhorrence of forfeiture, and balance of equities, as well as taking of property without due process of law as guaranteed by the Fifth Amendment to the Constitution.

Further, a claim of a sizable amount of monies would, as a practical business proposition, be ruinous to business standing and credit, as well as cloud all real estate of a handler.[1] It is not for the courts to assume that a litigant, government or private, would yield some of its rights especially in serious contests where as here the government contends a handler has not even his day in court.

No comparable stay of a collection of a decree or restraint of entry of a decree for money rests in the Act to give comfort to the theory of the Government. The mere fact of the issuance of an injunction of any sort stigmatizes and injures the defendant as having done or threatened to do some illegal or inequitable act of such unusual nature as to justify the extraordinary relief of injunction. *Lenroot* v. *Interstate Bakeries Corporation*, 55 F. Supp. 234, affirmed in part—reversed in part, 146 F. 2d 325; *Leonardo* v. *Leonardo*, 145 F. 2d 849.

A further incongruous situation under the Government's theory will result in that even the enforcement decree does not finally abate unless the controversy be "between the same parties." All enforcement actions are brought in the name of the United States[1] while all review actions

[1] Decree operates as a lien on real estate equivalent to a state court judgment. 28 U. S. C. 812. *Reconstruction Finance Corp.* v. *Maley*, 125 F. 2d 131.

[1] *U. S.* v. *Rock-Royal Co-op.*, 307 U. S. 533; *U. S.* v. *Wrightwood Dairy*, 315 U. S. 110; *U. S.* v. *LaVerne Co-op.*, 143 F. 2d 415.

are against the personal name of the then acting Secretary of Agriculture.[2] (By virtue of a provision of the order the "market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense * * *" 941.9 (b) (R. 62). As to such a claim the parties again would not be the same.) Possibly no termination would ever be achieved if abatement hinged upon a "final decree" between the same parties.

To correct all of these possible mistakes and errors an assumption of practice, or future conduct or judicial construction is required. The express wording of the statute clearly solves all problems immediately without strained and ambiguous interpretations.

While an Act and an order thereunder may pass the constitutionality tests as to a particular section or phrase of the enactment, the operation of that Act or order may not be proper. In the instant Act the operation can be constantly challenged by litigants as being unconstitutional as a denial of due process of law in the manner of operation.

If the theory announced by the Government herein should be adopted, all questions concerning the operation of the order are excluded from the courts and delegated to the administrative forum for determination. This includes all questions of law, obviously an unconstitutional delegation. Under 15 (A) the handler who entertains a controversy with the Government over an order must take his grievance to the Secretary of Agriculture "* * * stating that such an order * * * is not *in accordance with law* * * *." Thus questions *of law* would perforce be submitted

[2] *Stark* v. *Wickard*, 321 U.S. 288; *Queensboro Farms Products* v. *Wickard*, 137 F. 2d 969; *Wawa Dairy Farms* v. *Wickard*, 149 F. 2d 860.

to an administrative agency *to the exclusion of the courts*, except on appeal.

The Act continues "* * * after such a hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if *in accordance with law.*" The Secretary is delegated thereby the task of deciding pure questions of law. The review section to correct actions of the Secretary only exists to affirm or reverse the legal ruling in an appellate capacity. Such procedure clearly is repugnant to the constitution.

In the case of *People* v. *Bruner*, 343 Ill. 146, the constitutionality of a statute enacted in 1827 was attacked. This Act provided that "Juries in all cases shall be the judges of the law and fact." The Supreme Court of Illinois, following and adhering to the decision of *United States* v. *Battisto*, 2 Sumner, 240, *United States* v. *Morris*, 1 Curtis 23, and *Sparf and Hansen* v. *United States*, 156 U. S. 51, held that at common law a jury is the judge of facts and *not of the law*, and that the judiciary is the judge of the law.

Section 1 of Article III of the Constitution of the United States, vests the judicial power in a Supreme Court and certain subordinate courts.

The Illinois Supreme Court, at page 158 of the official report of the *Bruner* case, defined "judicial power" thusly:

> "The interpretation of Statutes, the determination of their validity, and the application of the rules and principles of the common law, among others, are inherently judicial functions. The constitution vested these functions in the courts created and authorized by it. (*Commonwealth* v. *Anthes*, 71 Mass. 185; *State* v. *Wright*, 53 Me. 328.)"

At page 159 of the official report, the Illinois Court quoted at length from Justice Harlan's opinion in the

case of *Sparf and Hansen* v. *United States*, 156 U. S. 51, pages 101-103 on the point that the Courts are the sole judges of the law and to hold otherwise would cause the utmost confusion in the law.

The same confusion thus described by Justice Harlan may exist where an administrator or administrative board is given the exclusive right to determine whether an Order, or provision thereof, issued under the Agricultural Marketing Agreement Act of 1937 is in "accordance with law." He is given the right by Section 15A to determine what the law is or should be. That delegation of judicial power to a member of the executive branch of the Government encroaches upon and invades the powers of the Court and hence, violates the provisions of Section 1 of Article III of the Constitution of the United States.

In the case of *United States* v. *Sugar*, 243 Fed. 423, District Court Judge Tuttle (D. C. Mich.), discussed the separation of powers in our government and noted that only the courts may decide what the law is.

It has been held that it is not an unwarranted delegation of judicial power to allow a board in control of marketing of milk to designate the limits of an area or to fix prices therein. *Franklin* v. *Alabama State Milk Control Board*, 232 Ala. 637, 169 So. 295. But whether a price fixed amounts to a confiscation of private property can be determined only by the courts. *Muller Dairies* v. *Baldwin*, 274 N. Y. S. 975, 978, 242 App. Div. 296. In the latter case, the Supreme Court of New York, Appellate Division, said:

> "The fixing of prices, like the fixing of rates or fares, is a legislative function, and here it was delegated to the milk control board. Whether the prices fixed by the board amounted to confiscation of petitioner's property was a judicial question for the courts. *Trustees of Village of Saratoga Springs* v.

Saratoga Gas, Electric Light and Power Co., 191 N. Y. 123, 83 N. E. 693, 18 L. R. A. (N. S.) 713, 14 Ann. Cas. 606."

Cooley's Constitutional Limitations, (8 Ed.) Vol. 2, page 863, states that one "Cannot be bound by a delegated exercise of judicial power, whether the delegation be by courts or by legislative act devolving judicial duties on ministerial officers."

Under the well known rule that courts will uphold the constitutionality of a statute wherever possible, the word "may" must be construed as permissive in order to reach a conclusion of constitutionality, if such construction leads to constitutionality.

To view the *LaVerne* case, *LaVerne Co-op. Citrus Association* v. *U. S.*, 143 F. 2nd 415, concerning which the Circuit Court of Appeals in the instant case announced that a decision contrary to that was reached, reveals an example of the unlawful delegation of authority resulting from a denial of judicial relief to handlers. The Circuit Court of Appeals for the 9th Circuit referred to the Secretary of Agriculture for determination by him as a matter of law such purely legal and constitutional matters as (1) deprivation of property without due process of law violating the fifth Amendment, (2) irreparable injury, and (3) arbitrary and discriminatory classification. Such matters were patently for judicial cognizance. It may well be concluded that the decision of the Circuit Court of Appeals in the *La Verne* case is in itself unconstitutional.

Other Acts of Congress which have been submitted to tests and interpretations by the courts are of little value for no other Act contains similar jurisdictional authorizations to the judicial and administrative forum.

Most similar Act is the Railway Labor Act, 45 U. S. C. 151, *et seq.*, which offers an election of remedies to an

employee sustaining personal injuries. There, as previously pointed out, the employee *may* proceed administratively or judicially. Even if the administrative forum is selected the employee *may* file suit in court to enforce an order of the board and such action "shall proceed in all respects as other civil suits." 45 U. S. C. 153(p).

Watson v. *Missouri K. T. R. Co.*, 17 S. W. 2d 357.
Tunstall v. *Brotherhood*, 323 U. S. 210.
Steele v. *L. and N. R. Co.*, 323 U. S. 192.

The other Acts of Congress under which administrative process ensue generally may be divided into two classes: (1) those which, in creating the administrative process, make it the exclusive remedy, and (2) those which are silent as to the exclusiveness of the administrative process or judicial review.

1. As to those Acts expressly making the administrative process exclusive the courts have held litigants to that procedure. *Yakus* v. *U. S.*, 321 U. S. 414; *Myers* v. *Bethlehem Corporation*, 303 U. S. 41; *Wallace Corp.* v. *N. L. R. B.*, 323 U. S. 248; *Columbia Broadcasting Co.* v. *U. S.*, 316 U. S. 407; *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381; *Illinois Commerce Commission* v. *Thompson*, 318 U. S. 675.

A line of cases construing such acts as make the administrative review exclusive still adheres to the general jurisdiction of the District Courts under the judicial code. Thus in *U. S.* v. *Abilene & So. Ry. Co.*, 265 U. S. 274, 282, this Court said:

> "Despite the failure to apply for a rehearing, the court had jurisdiction to entertain this suit. • • • Whether it would have denied relief until all possible administrative remedies had been exhausted was a matter which called for the exercise of judicial discretion. We cannot say that, in denying the motion to dismiss, the discretion was abused."

In that case the railroad was the *instigator* of the action, *selected* the forum, then *before exhausting* the administrative process, sought the jurisdiction of the District Court. This Court reaffirmed the inherently judicial power and discretion for relief.[1]

Further support of the doctrine comes from the holding by this Court that Congress cannot authorize a deprivation of liberty without due process of law by the device of making the fact findings of an administrative board conclusive upon the courts. *Bridges* v. *Wixon*, 144 F. 2d 927, reversed 326 U. S. 135. There this Court held that the sole evidence underlying the determination having been improperly admitted, the finding was unfounded and the judiciary could reverse the action of the board by rejecting the findings of fact.

2. As to statutes which are silent as to the exclusiveness of the administrative process or do not provide for a judicial review the Selective Service Act of 1940, 50 U. S. C. appendix, offered an opportunity for judicial interpretation.

The *Falbo* v. *U. S.*, 320 U. S. 549, case, holding that no judicial review was available where Congress had not authorized a review has been superseded by the recent *Estep* v. *U. S.*, 327 U. S. 114, decided by this Honorable Court. There the registrant exhausted his administrative remedy, then, in a prosecution was allowed to defend on the basis of lack of jurisdiction in the local board (administrative forum) by failure of the board to follow the rules and regulations.

[1]See also *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300 holding the granting of injunctive relief before exhaustion of administrative remedy to be within judicial discretion. And see *American Power & Light Co.* v. *S. E. C.*, 325 U. S. 385, holding that any interested person may seek judicial review of a Securities & Exchange Commission determination although not a party to that determination.

In a concurring opinion the following concise doctrine appears.

> "* * * Before a person may be punished for violating an administrative order due process of the law requires that the order be within the authority of the administrative agency and that it not be issued in such a way as to deprive the person of his constitutional rights. A court having jurisdiction to try such a case has a clear, inherent duty to inquire into these matters so that constitutional rights are not impaired or destroyed. Congress lacks any authority to negative this duty or to command a court to exercise criminal jurisdiction without regard to due process of law or other individual rights. To hold otherwise is to substitute illegal administrative discretion for constitutional safeguards. As this Court has previously said, 'Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority.' *St. Joseph's Stock Yards Co.* v. *United States*, 298 U. S. 38, 52."

By reason of the express language of Congress granting additional administrative relief at the handler's election and by reason of the resultant unconstitutional delegation of judicial powers under the forced construction urged by the Government, the answer to the principal question of this case is that the handlers' remedies are cumulative and not exclusive.

II.

The Enforcement Jurisdiction Invoked Under the Agricultural Marketing Agreement Act Was Improper in View of the Adequate Remedy at Law for the Collection of an Alleged Debt.

A second important question is whether under the Act the government properly sought injunctive relief for the collection of monies allegedly due.

In spite of special grants of injunctive relief to the government such extraordinary relief will be awarded only upon the necessary showing under established principles of equity practice.

> "A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocable statement of its purpose would have been made * * *. We are dealing here with the requirements of equity practice with a background of several hundred years history * * * the historic injunctive process was designed to deter, not to punish * * *. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied." *Hecht Company* v. *Bowles*, 321 U. S. 321, 329.

In the foregoing case an injunction under the Emergency Price Control Act was denied the government. The instant case presents no express authorization from Congress for punitive action of an equity decree for collection of a debt. Since there is no recourse by way of damages against the United States in favor of a handler who, under the government's interpretation of the Act, is subjected to the decree in an enforcement proceedings while he

establishes the lack of a debt, all caution should be exercised in entry of a mandatory injunction. *U. S.* v. *Taystee Baking Co.*, 55 F. Supp. 490, *Lenroot* v. *Interstate Bakeries Corporation*, 55 F. Supp. 234, affirmed in part and reversed in part, 146 F. 2d 325.

The fundamental doctrines of equity, irreparable injury, balance of equities, he who seeks equity must do equity, equity abhors a forfeiture and adequate remedy at law, all prevail for consideration by the chancellor as strongly when the government seeks relief as a private party. *U. S.* v. *Belt*, 47 F. Supp. 239, vacated 319 U. S. 521, affirmed 142 F. 2d 761, *U. S.* v. *Detroit T. & L. Co.*, 200 U. S. 321.

The only actual relief sought by the government is the collection of a disputed debt. Upon this theory the government contends that the order, Order 41, was violated and extraordinary relief beyond all relief available to it in courts of law should be granted. An analysis of the order involved indicates that some *sixteen* different operations or tasks are required of the handlers whereas the only actual "violation" here involved was the failure to pay an *additional* amount to the pool beyond that which the records of the dairy indicated was due and was paid.

The express wording of the order does not require payment within five days for errors disclosed by certification of *reports* but only disclosed in *payments* made.

> "941.8 (g) * * * Whenever verification by the market administrator of *reports* or *payments* of any handler discloses errors made in *payments* to the producer-settlement fund * * *." (Italics supplied.)

Verification of both is provided but payment for errors is limited.

There is nothing in the Act to vest in the market administrator a presumption of correctness in his and his aids'

duties. Congress has not so changed the rules of evidence as to imbue the audit of the market administrator with even a rebuttable presumption of correctness and the defendants in their answer affirmatively alleged the audit was erroneous, improper, incomplete, and inaccurate. (R. 71).

So strongly has Congress established the principle of withdrawal of equitable relief if an adequate remedy at law exists, the inherent principle has been codified.

> "Suits in equity shall not be maintained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law." 28 U. S. C. 384. Judicial Code 267.

Chancery should not have been appealed to in the instant case until the government as an alleged creditor had exhausted all its remedies at law. An action of debt would suffice. Sound discretion of the chancellor in a controversy of this type would have denied extraordinary relief. *U. S.* v. *Morgan*, 307 U: S. 183; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168.

No case under the Agricultural Marketing Agreement Act has been decided on the issue of adequacy of the legal remedy for the collection of a disputed debt. In the first Adler's Creamery case; *U. S.* v. *Adler's Creamery*, 107 F. 2d 987 in the Circuit Court of Appeals the court reiterates the rule that usual equitable problems are still to be considered even under the enforcement section of the Act. The second Adler's Creamery case, *U. S.* v. *Adler's Creamery*, 110 F. 2d 482, disposed of the contention that equity could not be used to collect a debt past due. Where money alone is sought, equity jurisdiction is expressly removed by the judicial code in favor of jurisdiction at law.

The instant case reveals that a jury demand as to the trial of the material issue of indebtedness remained unheeded (R. 115). The harm to a handler is unwarranted.

III.

The Material Issues of Fact Raised by the Pleadings Precluded the Summary Disposition of the Case by Use of Motion For Judgment on the Pleadings.

Indebtedness being the gist of the controversy in the District Court the issue thereof required a trial according to customary rules of procedure. Complaints alleging indebtedness and answers denying indebtedness all verified raised such a triable issue of fact that the government's motion for judgment on the pleadings was improper. The denials of the answers will be taken as true. *Beal* v. *Missouri Pac. R. R. Corp.*, 312 U. S. 45. *U. S.* v. *Alpha Portland Cement Co.*, 242 Fed. 978.

A mere denial if sufficient will not be inquired into. Extraneous facts cannot be considered. *Ream* v. *Callahan*, 42 F. Supp. 951, affirmed 136 F. 2d 194.

The handler for the reasons stated should have been granted a trial on the issues with opportunity for evidence to be presented by the government and the handlers.

Conclusion.

The respondents respectfully submit that for the reasons stated the judgment of the Circuit Court of Appeals should be affirmed.

WILLIAM PARKER WARD,
Attorney for Respondents.

November, 1946.

SUPREME COURT OF THE UNITED STATES

No. 54.—October Term, 1946.

United States of America, Petitioner, v. Joseph Ruzicka and Charles Ruzicka, Individually, and as Co-Partners, Trading as Seeley Dairy.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[December 16, 1946.]

Mr. Justice Frankfurter delivered the opinion of the Court.

We brought this case here, 327 U. S. 776, because it raises questions of importance in the administration of the Agricultural Marketing Act of 1937. 50 Stat. 246, 7 U. S. C. § 601 *et seq.* The general scheme of the Act and its operation have been before us in a series of cases. *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; *Stark* v. *Wickard*, 321 U. S. 288. Our immediate concern is with the provisions of the Act that distribute enforcing authority between the courts and the Secretary of Agriculture. These become relevant to the enforcement of Milk Order No. 41, an "Order Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area", and more particularly the portion of that elaborate Order which defines the rights and obligations of "handlers" of milk. Section 941.1 (5). The Order was issued under the powers delegated to the Secretary of Agriculture to effectuate the purposes of the Act. Section 8c of the Act.

Order No. 41 classifies milk received into the Chicago area according to its uses. To milk in each of the four

classes the market administrator assigns a uniform "use value." All handlers are required to report to the market administrator the quantity of milk purchased and put to its classified uses. On the basis of these reports the administrator, taking into account the total quantity of milk produced and the amount devoted to each classification, as well as the balance in the Producer-settlement Fund, and making authorized adjustments, announces monthly a uniform minimum price to be paid by handlers to producers. Since a handler's receipts from the re-sale of milk, or the sale of milk products, vary with the amount of the milk distributed in each class, the uniform price paid by handlers will create inequities unless adjustment is made, based on the comparative use value of the milk distributed by a particular handler. The mechanism for adjustment is the Producer-settlement Fund. Handlers are required to contribute to this Fund whenever the use value of the milk handled by them during the month is greater than the norm on which the uniform price is based. Conversely, handlers whose milk distribution is of low use value and whose fixed minimum costs are therefore out of line with their receipts, are recompensed from this Fund. Effective enforcement of such a marketing scheme rests on proper accounting, reliable reports and alert inspection. At best, however, errors are inevitable, which may call for payments by handlers into the Fund. The reliance of the industry upon that Fund makes prompt payments into it imperative.

An order for payment into the Fund and its resistance led to this litigation. The Ruzickas, handlers of milk, filed with the market administrator required reports and received from him a transcript of their account with the Fund for the period in controversy. Deficiencies were disclosed which the Ruzickas refused to pay, in disregard of § 941.8 (e) and (g) of Order 41 requiring a handler to pay within five days "the amount so billed". Under § 8a (6)

of the Agricultural Marketing Agreement Act this suit was begun in the Northern District of Illinois for enforcement. The Government prayed for a mandatory injunction commanding compliance with Order 41 by payment of the sums alleged to be due to the Fund. If it be relevant, it was not alleged that there was danger of irreparable loss because of insolvency of the Fund. By their answer the Ruzickas justified their failure to pay, chiefly on the ground that the demand was based upon faulty inspection of their accounts and improper tests of their milk and milk products. The District Court ruled that "the defendants having failed to avail themselves of the administrative remedy provided by said Act, may not raise such issues of fact before this Court". On the issue in the suit thus limited, the District Court granted the Government's motion for judgment on the pleadings. The Circuit Court of Appeals for the Seventh Circuit, one judge dissenting, reversed the District Court, ruling that the validity of the demand by the Secretary of Agriculture may be contested in an enforcement proceeding under § 8a (6). 152 F. 2d 167.

Thus the question before us is whether a handler may resist a claim against him by the Secretary of Agriculture, made according to the procedure defined in the Act, without previously having sought to challenge the claim in a proceeding, also defined in the Act, before the Secretary of Agriculture. The answer is found on a fair reading of the Agricultural Marketing Agreement Act in the context of its purposes and of the scheme designed by Congress for their realization.

The sections of the statute directly relevant to our problem are set out in the margin.[1] Briefly, the district courts of the United States are "vested with jurisdiction specifi-

[1] "8a (6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and

cally to enforce" orders issued pursuant to the Act.[2] The Act authorizes a handler to challenge before the Secretary of Agriculture his order "or any obligation imposed in connection therewith" as "not in accordance with

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restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

8c (15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

8c (15) (B) The District Courts of the United States (including the District Court of the United States for the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this sub-section (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)."

[2] Section 8a (8) is also invoked by petitioner. But that section adds to the Government's remedies. It implies no judicial review in favor of handlers.

law", and to ask to have it modified or to be exempted from it. When the order is so challenged, the determination of the Secretary of Agriculture, after hearing, is final but only "if in accordance with law". Section 8c (15) (A). To test whether such ruling is "in accordance with law" the handler may bring the Secretary's action for review before the appropriate district court. Section 8c (15) (B). But the very subsection, (15), which gives the handler access to the Secretary of Agriculture for administrative relief and opportunity for judicial review of his determination, provides that the pendency of the proceedings before the Secretary, or in the district court to review the Secretary's ruling, "shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief" under § 8a (6). It is only when "a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)" that proceedings brought for enforcement under § 8a (6) "shall abate". Section 8c (15) (B).

To be sure, Congress did not say in words that, in a proceeding under § 8a (6) to enforce an order, a handler may not question an obligation which flows from it. But meaning, though not explicitly stated in words, may be imbedded in a coherent scheme. And such we find to be the provisions taken in their entirety, as a means for attaining the purposes of the Act while at the same time protecting adequately the interests of individual handlers.

The procedure devised by Congress explicitly gave to an aggrieved handler an appropriate opportunity for the correction of errors or abuses by the agency charged with the intricate business of milk control. In addition, if the Secretary fails to make amends called for by law the handler may challenge the legality of the Secretary's ruling in court. Handlers are thus assured opportunity to establish claims of grievances while steps for the protection

of the industry as a whole may go forward. Sections 8a (6) and 8c (15) thus form a complementary procedural scheme. Contrariwise, it would make for disharmony to extrapolate from these provisions of the statute the right to consider independently, in a proceeding by the Government for the enforcement of the Secretary's order, questions for which Congress explicitly furnished the handler an expert forum for contest with ultimate review by a district court.

The situation before us indicates how disruptive it would be to allow issues that may properly come before a district court in a proceeding under § 8c (15) to be open for independent adjudication in a suit for enforcement under § 8a (6). After a presumably careful study by those technically equipped, a program was devised for the dairy farmers in one of the large areas of the country. The success of the operation of such Congressionally authorized milk control must depend on the efficiency of its administration. Promptness of compliance by those subject to the scheme is the presupposition of Order No. 41. Thus, definite monthly deadlines are fixed by the Order for every step in the program. In large measure, the success of this scheme revolves around a "producers" fund which is solvent and to which all contribute in accordance with a formula equitably determined and of uniform applicability. Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults by some handlers may work unfairness to others, encourage wider non-compliance, and engender those subtle forces of doubt and distrust which so readily dislocate delicate economic arrangements. To make the vitality of the whole arrangement depend on the contingencies and inevitable delays of litigation, no matter how alertly pursued, is not a result to be attributed to Congress unless support for it is much more manifest than we here find. That Congress avoided such hazards

for its policy is persuasively indicated by the procedure it devised for the careful administrative and judicial consideration of a handler's grievance. It thereby safeguarded individual as well as collective interests. In the case before us, administrative proceedings were instituted before the Secretary of Agriculture and, apparently, are awaiting his action. Presumably the Secretary of Agriculture will give the respondents the rights to which Congress said they were entitled. If they are dissatisfied with his ruling, they may question it in a district court. The interests of the entire industry need not be disturbed in order to do justice to an individual case.[3]

It is suggested that Congress did not authorize a district court to enforce an order not "in accordance with law". The short answer to this rather dialectic point is that whether such an order is or is not in accordance with law is not a question that brings its own immediate answer, or even an answer which it is the familiar, everyday business of courts to find. Congress has provided a special procedure for ascertaining whether such an order is or is not in accordance with law. The questions are not, or may not be, abstract questions of law. Even when they are formulated in constitutional terms, they are questions of law arising out of, or entwined with, factors that call for understanding of the milk industry. And so Congress has

[3] "During the period while any such petition is pending before the Secretary and until notice of the Secretary's ruling is given to the petitioner, the penalties imposed by the act for violation of an order cannot be imposed upon the petitioner if the court finds that the petition was filed in good faith and not for delay. The Secretary may, nevertheless, during this period proceed to obtain an injunction against the petitioner pursuant to section 8a (6) of the Agricultural Adjustment Act. . . . It is believed that these provisions establish an equitable and expeditious procedure for testing the validity of orders without hampering the Government's power to enforce compliance with their terms." S. Rep. No. 1011, 74th Cong., 1st Sess., p. 14.

provided that the remedy in the first instance must be sought from the Secretary of Agriculture. It is on the basis of his ruling, and of the elucidation which he would presumably give to his ruling, that resort may be had to the courts. Congress seems to have emphasized the different functions in the enforcement of the Act that § 8a and § 8c serve by explicitly directing that the proceedings for relief instituted by a handler under § 8c shall not "impede, hinder, or delay" enforcement proceedings by the United States under § 8a.

We are dealing here solely with the rights of handlers. This is not *Stark* v. *Wickard*, 321 U. S. 288. In that case it was concluded that since Congress had provided no administrative remedy for a producer to review the legality of an order against him, presumably the courts were not closed to him. But by § 8c (15) Congress has made precisely such provisions for handlers. As to them the procedural scheme is complete.

The Agricultural Marketing Agreement Act is one of many enactments by which Congress in regulating economic enterprise has divided the duty of enforcement between courts and administrative agencies. But there is the greatest variety in the manner in which Congress has distributed this responsibility. Those who are entitled to speak tell us that "development of the natural sciences has often suffered from premature generalization. Certainly the recent growth of administrative law counsels against generalizations regarding what is compendiously called judicial review of administrative action. And so we deem it desirable, in a case like this, to hug the shore of the precise problem before us in relation to the provisions of the particular Act immediately relevant. One general observation, may, however, be permitted. Both courts and administrative bodies are law-enforcing agencies, utilized by Congress as such. In construing the enforcement provisions of legislation like the Marketing

Act, it is important to remember that courts and administrative agencies are collaborative "instrumentalities of justice", and not business rivals. See *United States* v. *Morgan*, 307 U. S. 183, 191; *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 141 *et seq.* And so we are not called upon to decide what powers inhere in a court of equity, exercising due judicial discretion, even in a suit such as was here brought by the United States for the enforcement of an order under § 8a. We say this because it appears that at a stage in the proceedings in the district court a motion for a stay, pending disposition of the petition by the Ruzickas before the Secretary of Agriculture, was made by the respondents. With the court's leave, this motion was subsequently withdrawn. The power of the district court to have acted on it is therefore not before us. Compare *Scripps Howard Radio* v. *Comm'n*, 316 U. S. 4; *Hecht Co.* v. *Bowles*, 321 U. S. 321.

Judgment Reversed.

MR. JUSTICE DOUGLAS concurs in the result.